

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

1 JOVANNY ACUNA-MARTINEZ,

2 Case No. 2:23-cv-01390-ART-MDC

3 Plaintiff,

4 SCREENING ORDER

5 v.

6 C.O.,

7 Defendant.

8 Plaintiff Jovanny Acuna-Martinez, who is incarcerated in the custody of the
 9 Nevada Department of Corrections (“NDOC”), has submitted a civil rights
 10 complaint pursuant to 42 U.S.C. § 1983, and has filed an application to proceed
 11 *in forma pauperis*. (ECF Nos. 1-1, 4). The matter of the filing fee will be temporarily
 12 deferred. The Court now screens Plaintiff’s civil rights complaint under 28 U.S.C.
 13 § 1915A.

14 **I. SCREENING STANDARD**

15 Federal courts must conduct a preliminary screening in any case in which
 16 an incarcerated person seeks redress from a governmental entity or officer or
 17 employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the
 18 court must identify any cognizable claims and dismiss any claims that are
 19 frivolous, malicious, fail to state a claim upon which relief may be granted, or
 20 seek monetary relief from a defendant who is immune from such relief. *See id.*
 21 § 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed.
 22 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a
 23 claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
 24 the violation of a right secured by the Constitution or laws of the United States,
 25 and (2) that the alleged violation was committed by a person acting under color
 26 of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

27 In addition to the screening requirements under § 1915A, pursuant to the
 28 Prison Litigation Reform Act (“PLRA”), a federal court must dismiss an

1 incarcerated person's claim if "the allegation of poverty is untrue" or if the action
 2 "is frivolous or malicious, fails to state a claim on which relief may be granted, or
 3 seeks monetary relief against a defendant who is immune from such relief." 28
 4 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon
 5 which relief can be granted is provided for in Federal Rule of Civil Procedure
 6 12(b)(6), and the court applies the same standard under § 1915 when reviewing
 7 the adequacy of a complaint or an amended complaint. When a court dismisses
 8 a complaint under § 1915(e), the plaintiff should be given leave to amend the
 9 complaint with directions as to curing its deficiencies, unless it is clear from the
 10 face of the complaint that the deficiencies could not be cured by amendment. See
 11 *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
 13 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for
 14 failure to state a claim is proper only if it is clear that the plaintiff cannot prove
 15 any set of facts in support of the claim that would entitle him or her to relief. See
 16 *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this
 17 determination, the court takes as true all allegations of material fact stated in the
 18 complaint, and the court construes them in the light most favorable to the
 19 plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).
 20 Allegations of a *pro se* complainant are held to less stringent standards than
 21 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980).
 22 While the standard under Rule 12(b)(6) does not require detailed factual
 23 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell*
 24 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the
 25 elements of a cause of action is insufficient. *Id.*

26 Additionally, a reviewing court should "begin by identifying pleadings
 27 [allegations] that, because they are no more than mere conclusions, are not
 28 entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

1 “While legal conclusions can provide the framework of a complaint, they must be
2 supported with factual allegations.” *Id.* “When there are well-pleaded factual
3 allegations, a court should assume their veracity and then determine whether
4 they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
5 complaint states a plausible claim for relief . . . [is] a context-specific task that
6 requires the reviewing court to draw on its judicial experience and common
7 sense.” *Id.*

8 Finally, all or part of a complaint filed by an incarcerated person may
9 therefore be dismissed *sua sponte* if that person’s claims lack an arguable basis
10 either in law or in fact. This includes claims based on legal conclusions that are
11 untenable (e.g., claims against defendants who are immune from suit or claims
12 of infringement of a legal interest which clearly does not exist), as well as claims
13 based on fanciful factual allegations (e.g., fantastic or delusional scenarios). *See*
14 *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989); *see also McKeever v. Block*, 932
15 F.2d 795, 798 (9th Cir. 1991).

16 **II. SCREENING OF COMPLAINT**

17 In the complaint, Plaintiff sues Doe correctional officer (“C/O”) for events
18 that took place while Plaintiff was incarcerated at Southern Desert Correctional
19 Center (“SDCC”). (ECF No. 1-1 at 1). Plaintiff brings three claims and seeks
20 monetary damages. (*Id.* at 5-6).

21 The complaint alleges the following: On June 10, 2023, Plaintiff was
22 attacked and assaulted by other inmates. (*Id.* at 4). That night, Doe C/O saw an
23 inmate assault Plaintiff. (*Id.*) When Plaintiff walked into the bathroom, Doe C/O
24 flashed the lights and Plaintiff was assaulted in the bathroom by three inmates.
25 (*Id.*) Doe C/O flashed the lights again and the inmates stopped. (*Id.*) Plaintiff
26 then walked outside and was assaulted by inmates with a homemade knife, or
27 shank. (*Id.*) Doe C/O witnessed this but did not do anything. (*Id.*) When Plaintiff
28 went to the bubble and asked to be removed from the unit, Doe C/O “walked

1 around.” (*Id.*)

2 Plaintiff received approximately 10 stabs to his head, eye, neck, back, both
 3 arms, and right hand. (*Id.* at 2). After the stabbing, Doe C/O put Plaintiff in a
 4 holding cell. (*Id.*) Prison officials did not take Plaintiff to a hospital until the next
 5 day. (*Id.*) Plaintiff had to use his shirt to stop the bleeding. (*Id.* at 3).

6 Plaintiff had migraines for two months. (*Id.*) Because prison officials
 7 refused to check on the puncture wounds to Plaintiff’s head and eye, Plaintiff now
 8 wears glasses. (*Id.*) Plaintiff also has numbness in his arm. (*Id.*)

9 Someone stole Plaintiff’s personal items including clothes, shoes, personal
 10 appliances, hotpot, charger, etc. (*Id.* at 5).

11 Plaintiff brings three Eighth Amendment claims for medical care (claim 1),
 12 threat to safety (claim 2), and property (claim 3). (*Id.* at 3-5). The Court interprets
 13 the allegations as claims for Eighth Amendment deliberate indifference to serious
 14 medical needs (claim 1), Eighth Amendment failure to protect (claim 2), and
 15 Fourteenth Amendment due process property deprivation (claim 3). The Court
 16 will address each claim in turn.

17 **A. Claim 1**

18 The Eighth Amendment prohibits the imposition of cruel and unusual
 19 punishment and “embodies ‘broad and idealistic concepts of dignity, civilized
 20 standards, humanity, and decency.’” *Estelle v. Gamble*, 429 U.S. 97, 102
 21 (1976). A prison official violates the Eighth Amendment when he acts with
 22 “deliberate indifference” to the serious medical needs of an inmate. *Farmer v.*
 23 *Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment
 24 violation, a plaintiff must satisfy both an objective standard—that the deprivation
 25 was serious enough to constitute cruel and unusual punishment—and a
 26 subjective standard—deliberate indifference.” *Snow v. McDaniel*, 681 F.3d 978,
 27 985 (9th Cir. 2012), *overruled on other grounds by Peralta v. Dillard*, 744 F.3d
 28 1076, 1082–83 (9th Cir. 2014).

1 To establish the first prong, “the plaintiff must show a serious medical need
 2 by demonstrating that failure to treat a prisoner’s condition could result in
 3 further significant injury or the unnecessary and wanton infliction of pain.” *Jett*
 4 *v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotations omitted). To
 5 satisfy the deliberate indifference prong, a plaintiff must show “(a) a purposeful
 6 act or failure to respond to a prisoner’s pain or possible medical need and (b)
 7 harm caused by the indifference.” *Id.* “Indifference may appear when prison
 8 officials deny, delay or intentionally interfere with medical treatment, or it may
 9 be shown by the way in which prison physicians provide medical care.” *Id.*
 10 (internal quotations omitted). When a prisoner alleges that delay of medical
 11 treatment evinces deliberate indifference, the prisoner must show that the delay
 12 led to further injury. *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766
 13 F.2d 404, 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more,
 14 is insufficient to state a claim of deliberate medical indifference”).

15 The Court finds that Plaintiff states a colorable claim against Doe C/O.
 16 Based on the allegations, Plaintiff had been stabbed multiple times and, instead
 17 of seeking medical help for Plaintiff, Doe C/O kept Plaintiff in a holding cell
 18 overnight. This claim will proceed against Doe C/O when Plaintiff learns his
 19 identity.

20 **B. Claim 2**

21 Under the Eighth Amendment, prison officials have a duty to protect
 22 prisoners from violence at the hands of other prisoners. *Farmer v. Brennan*, 511
 23 U.S. 825, 833 (1994). To establish a violation of this duty, the prisoner must
 24 establish that prison officials were deliberately indifferent to serious threats to
 25 the inmate’s safety. *Id.* at 834. To demonstrate that a prison official was
 26 deliberately indifferent to a serious threat to the inmate’s safety, the prisoner
 27 must show that “the official [knew] of and disregard[ed] an excessive risk to
 28 inmate . . . safety; the official must both be aware of facts from which the inference

1 could be drawn that a substantial risk of serious harm exists, and [the official]
 2 must also draw the inference." *Id.* at 837. Prison officials may not escape liability
 3 because they cannot, or did not, identify the specific source of the risk; the
 4 serious threat can be one to which all prisoners are exposed. *Id.* at 843.

5 The Court finds that Plaintiff states a colorable claim for failure to protect
 6 against Doe C/O. Based on the allegations, Doe C/O watched Plaintiff get
 7 attacked by inmates three different times, including being stabbed, and did
 8 nothing to stop the attacks. This claim will proceed against Doe C/O when
 9 Plaintiff learns his identity.

10 **C. Claim 3**

11 While an authorized, intentional deprivation of property is actionable under
 12 the Due Process Clause, neither a negligent nor intentional unauthorized
 13 deprivation of property by a prison official is actionable if a meaningful post-
 14 deprivation remedy is available for the loss. *Hudson v. Palmer*, 468 U.S. 517, 533
 15 (1984); *Quick v. Jones*, 754 F.2d 1521, 1524 (9th Cir. 1985). An authorized
 16 deprivation is one carried out pursuant to established state procedures,
 17 regulations, or statutes. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436
 18 (1982); *Piatt v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir. 1985); *see also*
 19 *Knudson v. City of Ellensburg*, 832 F.2d 1142, 1149 (9th Cir. 1987).

20 The Court dismisses this claim without prejudice with leave to amend.
 21 Plaintiff has not indicated who stole his personal property. If Plaintiff is trying to
 22 allege that another inmate stole his property, he fails to state a colorable claim
 23 because inmates do not act under color of state law. *See West v. Atkins*, 487 U.S.
 24 42, 49 (1988) (holding that the "[t]he traditional definition of acting under color
 25 of state law requires that the defendant in a § 1983 action have exercised power
 26 'possessed by virtue of state law and made possible only because the wrongdoer
 27 is clothed with the authority of state law'"). If Plaintiff is alleging that a prison
 28 official stole his property, he will need make clear whether it was an intentional

1 deprivation of property or an intentional unauthorized deprivation. This claim is
2 dismissed without prejudice with leave to amend.

3 **D. Doe Defendant**

4 Although Plaintiff states colorable claims, this matter cannot proceed
5 because Plaintiff's colorable claims are asserted against a defendant that cannot
6 presently be served. Although the use of "Doe" to identify a defendant is not
7 favored, flexibility is allowed in some cases where the identity of the parties is not
8 known prior to filing a complaint but can subsequently be determined through
9 discovery. *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Such a course
10 of action might be appropriate when a matter may proceed to discovery. This
11 matter cannot proceed to discovery because the complaint cannot be served on
12 any party in the first instance. The Court cannot order service of a complaint on
13 an unknown person. Any attempt to serve the complaint on Doe C/O would be
14 futile. Plaintiff has not named any other person that can be served. Before
15 Plaintiff may proceed, he must amend his complaint and identify Doe C/O.

16 The Court would note that one possible method by which Plaintiff might
17 attempt to identify Doe C/O prior to service of his complaint is through Federal
18 Rule of Civil Procedure 45 ("Rule 45"). Rule 45 provides the only way to get
19 information from companies, people, or entities that are not named in a
20 lawsuit. *Allen v. Woodford*, 543 F. Supp. 2d 1138, 1145 (E.D. Cal. 2008) (granting
21 the plaintiff's motion to compel discovery and ordering the Custodian of Records
22 of the California Department of Corrections and Rehabilitation to produce the
23 plaintiff's requested documents under Rule 45). This is done by obtaining a Rule
24 45 subpoena duces tecum, which is a document that requires the person served
25 with the Rule 45 subpoena to provide requested information in their possession.

26 If Plaintiff uses this method, he must file a properly supported and
27 complete motion for the Court to issue a Rule 45 subpoena duces tecum. Plaintiff
28 must attach a copy of his proposed Rule 45 subpoena(s) to his motion, and his

1 motion must clearly identify the documents that would have the information
 2 Plaintiff is seeking.¹ Plaintiff must also explain why the documents and
 3 information would be available from the company, entity, or person that is the
 4 target of the subpoena. Plaintiff is directed to carefully review Rule 45 of the
 5 Federal Rules of Civil Procedure before filing such a motion.

6 **E. Leave to Amend**

7 Plaintiff is granted leave to file an amended complaint to cure the
 8 deficiencies of his Fourteenth Amendment claim and to identify Doe C/O. If
 9 Plaintiff chooses to file an amended complaint, he is advised that an amended
 10 complaint supersedes (replaces) the original complaint and, thus, the amended
 11 complaint must be complete in itself. *See Hal Roach Studios, Inc. v. Richard*
 12 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact
 13 that a party was named in the original complaint is irrelevant; an amended
 14 pleading supersedes the original”); *see also Lacey v. Maricopa Cnty.*, 693 F.3d
 15 896, 928 (9th Cir. 2012) (holding that for claims dismissed with prejudice, a
 16 plaintiff is not required to reallege such claims in a subsequent amended
 17 complaint to preserve them for appeal). Plaintiff’s amended complaint must
 18 contain all claims, defendants, and factual allegations that Plaintiff wishes to
 19 pursue in this lawsuit, including the claim(s) found cognizable in this order and
 20 must identify Doe C/O by name. Moreover, Plaintiff should file the amended
 21 complaint on this Court’s approved prisoner civil rights form, and it must be
 22 entitled “First Amended Complaint.”

23 The Court notes that if Plaintiff chooses to file an amended complaint
 24 curing the deficiencies, as outlined in this order, Plaintiff will file the amended
 25 complaint within 60 days from the date of entry of this order. If Plaintiff chooses
 26 not to file an amended complaint curing the stated deficiencies, this action will
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28 ¹ Plaintiff is seeking the identity of the correctional officer who was on duty in his unit at SDCC
 on June 10, 2023, when Plaintiff was attacked and stabbed by other inmates.

1 be dismissed without prejudice.

2 **III. CONCLUSION**

3 It is therefore ordered that a decision on the application to proceed *in forma*
4 *pauperis* (ECF No. 4) is deferred.

5 It is further ordered that the Clerk of the Court file the complaint (ECF No.
6 1-1).

7 It is further ordered that claim 1, alleging Eighth Amendment deliberate
8 indifference to serious medical needs, may proceed against Defendant Doe C/O
9 when Plaintiff learns his identity and files an amended complaint with his name.

10 It is further ordered that claim 2, alleging Eighth Amendment failure to
11 protect, may proceed against Defendant Doe C/O when Plaintiff learns his
12 identity and files an amended complaint with his name.

13 It is further ordered that claim 3, alleging Fourteenth Amendment due
14 process property deprivation, is dismissed without prejudice with leave to amend.

15 It is further ordered that, if Plaintiff chooses to file an amended complaint
16 curing the deficiencies of his complaint, as outlined in this order, Plaintiff will file
17 the amended complaint within 60 days from the date of entry of this order.

18 It is further ordered that the Clerk of the Court will send to Plaintiff the
19 approved form for filing a § 1983 complaint, instructions for the same, and a copy
20 of his original complaint (ECF No. 1-1). If Plaintiff chooses to file an amended
21 complaint, he should use the approved form and mark "First Amended
22 Complaint" in the caption.

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1 If Plaintiff does not file an amended complaint within 60 days, the Court
2 will dismiss this action without prejudice for Plaintiff to initiate a new action when
3 he learns the identity of Doe C/O.

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5 Dated this 18th day of June 2024.

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8 ANNE R. TRAUM
9 UNITED STATES DISTRICT JUDGE

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